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ELLSWORTH C. ALVORD (1964)

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RECORDATION NO. 20796-B FILED  
OCT 29 '04 2-24 PM  
SURFACE TRANSPORTATION BOARD  
OF COUNSEL  
URBAN A. LESTER

October 29, 2004

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Assignment and Assumption Agreement, dated as of October 29, 2004, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Lease which was previously filed with the Board under Recordation Number 20796.

The names and addresses of the parties to the enclosed document are:

Seller: CIT Group/Equipment Financing Inc.  
1211 Avenue of the Americas  
New York, New York 10036

Buyer: Babcock & Brown Rail Funding LLC  
230 Park Avenue, 32<sup>nd</sup> Floor  
New York, New York 10169

Mr. Vernon A. Williams  
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Page 2

A description of the railroad equipment covered by the enclosed document is:

150 aluminum coal gondola railcars: WEPX 2875 – WEPX 3024.

A short summary of the document to appear in the index is:

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$30.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm  
Enclosures

RECORDATION NO.

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2-24 PM

EXECUTION VERSION

**SURFACE TRANSPORTATION BOARD  
ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement, dated as of October 29, 2004 (this "Agreement"), is between The CIT Group/Equipment Financing, Inc., a New York corporation (the "Seller"), and Babcock & Brown Rail Funding LLC, a Delaware limited liability company (the "Buyer").

**Witnesseth:**

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement dated as of October 29, 2004 (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller and the Buyer on the date hereof.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

1. **Definitions.** Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.
2. **Assignment.** Effective as to each item of Equipment on the Closing Date, the Seller sells to the Buyer all of the Seller's rights, title and interest, except as reserved under Section 2.1 of the Purchase Agreement, in and to such item and assigns to the Buyer all of the Seller's rights and obligations, except to the extent constituting Existing Obligations, under each of the following as they relate to such item:
  - (a) Master Net Railcar Lease made as of July 24, 1997, entered into by and between the Seller, as lessor, and Wisconsin Electric Power Company (the "Lessee"), as lessee, as amended, modified or supplemented from time to time (the "Lease");
  - (b) Schedule No. 01 to Master Net Railcar Lease made as of July 24, 1997 by and between the Seller and the Lessee;
  - (c) Extension to Lease entered into as of July 28, 2000, by and between the Seller and the Lessee, for the period September 1, 2000 through August 31, 2003;
  - (d) Extension to Lease Schedule No. 01 entered into as of September 15, 2003, effective as of September 1, 2003, by and between the Seller and the Lessee;
  - (e) Letter Agreement dated October 6, 2004, effective from April 2003, between the Seller and the Lessee with respect to the replacement of bolsters on the Equipment; and

- (f) Warranty Bill of Sale dated July 25, 1997 from Thrall Car Manufacturing Company to the Seller (collectively, the "Assigned Operative Agreements");

provided that, with respect to the document described in clause (e) above, the Seller is assigning to the Buyer all of the Seller's rights but not its obligations.

Notwithstanding the foregoing, the Seller shall continue to be entitled to the benefit of any rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

3. Acceptance of Assignment; Assumption of Obligations; Effect of Assignment.

The Buyer accepts the assignment contained in Section 2 hereof and, in respect of the period on and after the Closing Date, assumes all obligations of the Seller under, and agrees to be bound to the same extent as the Seller by all the terms of, the Assigned Operative Agreements. Effective on and after the Closing Date, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Seller shall be deemed to mean the Buyer. The Seller, in respect of the period on and after the Closing Date, is released of all obligations of the lessor under the Assigned Operative Agreements, except to the extent constituting Existing Obligations.

4. Definitions. Except as otherwise specified or as the context may otherwise require, the following terms have the respective meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

Bill of Sale: as to any one or more items of Equipment, a bill of sale in the form of Exhibit B hereto.

Closing Date: as to any one or more items of Equipment and related Ownership Interest the date of the Bill of Sale with respect thereto.

Equipment: the items of equipment listed on Exhibit A hereto, together with each and every part, accessory, component and any equipment installed therein or attached thereto owned by the Seller (individually such railcars shall be referred to as an "item" or "items of Equipment").

Existing Obligations: any and all liabilities and obligations of Seller under the Ownership Interest, including the Assigned Operative Agreements, or otherwise relating to the Equipment in each such case, to the extent arising or occurring prior to the Closing Date (whether or not asserted or assessed), and, with respect to the obligations, to have been performed by Seller prior to the Closing Date.

Ownership Interest: the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Assigned Operative Agreements, except the Existing Obligations.

5. Amendments. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

6. Notices. All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 9.5 of the Purchase Agreement.

7. Headings. The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

8. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

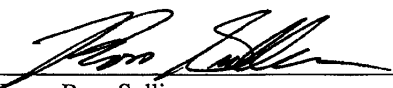
9. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

10. Recordation. The Seller and the Buyer agree to record this Agreement with the Surface Transportation Board to evidence the assignment by the Seller to the Buyer of the Seller's rights and obligations under the Lease, which shall have been recorded with the Surface Transportation Board.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

BABCOCK & BROWN RAIL FUNDING LLC,  
as Buyer

By:   
Name: Ross Sullivan  
Title: Vice President

THE CIT GROUP/EQUIPMENT FINANCING,  
INC., as Seller

By: \_\_\_\_\_

Name:  
Title:

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

BABCOCK & BROWN RAIL FUNDING LLC,  
as Buyer

By: \_\_\_\_\_  
Name:  
Title:

THE CIT GROUP/EQUIPMENT FINANCING,  
INC., as Seller

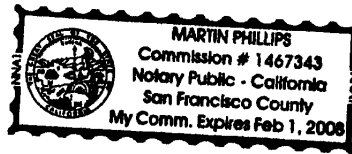
By: Nancy A. Nardella

Name: Nancy A. Nardella  
Title: Vice President

State of California                    )  
  )  
County of San Francisco            )

On this, the 26 day of October, 2004, before me, a Notary Public in and for said County and State, personally appeared Ross Sullivan, the Vice President of Babcock & Brown Rail Funding LLC, who acknowledged himself to be a duly authorized officer of Babcock & Brown Rail Funding LLC, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.



Name: Martin Phillips  
Notary Public

My Commission Expires: 2/1/08

Residing in: San Francisco



State of New York           )  
  )  
County of New York        )

On this, the 26<sup>th</sup> day of October, 2004, before me, a Notary Public in and for said County and State, personally appeared Nancy A. Nardella, the Vice President of The CIT Group/Equipment Financing, Inc., who acknowledged himself/herself to be a duly authorized officer of The CIT Group/Equipment Financing, Inc., and that, as such officer, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: Barbara Garner  
Notary Public           BARBARA GARNER  
                                  Notary Public, State of New York  
                                  No. 01GA5065133  
My Commission Expires:   Qualified in Nassau County  
                                  Certificate filed in New York County  
                                  Commission Expires Sept. 3, 2006  
Residing in: Nassau County

**Exhibit A  
(to Assignment  
and Assumption Agreement  
and Bill of Sale)**

**EQUIPMENT**

<b># <u>Cars</u></b>	<b><u>Year Built</u></b>	<b><u>Description</u></b>	<b><u>Reporting Marks</u></b>	<b><u>Casualty Marks</u></b>
150	1997	4530 CF aluminum coal gondolas, AAR Car Type Code J311, 286,000 GRL	WEPX 2875-3024, inclusive	None

**Exhibit B  
(to Assignment  
and Assumption Agreement)**

**BILL OF SALE**

On this \_\_\_\_\_ day of October, 2004, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, The CIT Group/Equipment Financing, Inc. ("Seller"), does hereby sell, transfer and assign to Babcock & Brown Rail Funding LLC ("Buyer") all of Seller's rights, title and interest in and to the equipment described in Exhibit A hereto (the "Equipment"), subject to the terms and conditions of the Purchase Agreement dated as of the date hereof (the "Purchase Agreement") and the Assignment and Assumption Agreement dated as of the date hereof, each between Seller and Buyer.

Seller represents and warrants to Buyer and its successors and assigns that at the time of delivery of the Equipment, Seller had legal title thereto and good and lawful right to sell the Equipment, and the Equipment was free and clear of all Liens (as defined in the Purchase Agreement), other than as described in Section 3.3 of the Purchase Agreement.

THE CIT GROUP/EQUIPMENT  
FINANCING, INC.

By: \_\_\_\_\_  
Name:  
Title:

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

10/29/04



\_\_\_\_\_  
Robert W. Alvord